

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

RE APPLICATION OF:

INVENTOR(S) : Viktors Berstis  
APPL. NUMBER: 09/970,655  
FILED: 10/04/2001  
TITLE: Extracting  
Information from  
Software

GROUP ART UNIT: 2192  
EXAMINER: Chuck O. Kendall

Docket Number: AUS920010938US1

Honorable Commissioner For Patents  
PO Box 1450  
Alexandria, Virginia 22313-14500

I hereby certify that this correspondence is being deposited with the United States Postal Service as First-Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on the date below:

Signed:

*Robert V. Wilder*

Name: Robert V. Wilder

Date: July 28, 2006

**TRANSMITTAL OF APPEAL BRIEF**

Enclosed herewith is an Appeal Brief for the above-identified application submitted in response to the Notice of Non-Compliance With 37 CFR 41.37 which was mailed 7/5/2006. In a telephone conversation with Ms. Monroe on July 27th, it was determined that Paragraph #2 of the Notice should have been checked instead of Paragraph #3. Also, the "Status of Amendments" paragraph in the Appeal Brief has been corrected pursuant to the above-identified Notice and the corrected Appeal Brief is submitted herewith.

Respectfully submitted,

*Robert V. Wilder*

Robert V. Wilder (Tel: 512-246-8555)  
Registration No. 26,352  
Attorney for Applicants  
4235 Kingsburg Drive  
Round Rock, Texas 78681



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Attorney Docket No. AUS920010938US1

IN RE APPLICATION OF:

Viktors Berstis

Serial No. 09/970,655

Filed: October 4, 2001

For: Extracting Information  
From Software

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Examiner: Chuck O. Kendall

Art Unit: 2192

**APPEAL BRIEF**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Sir:

This Brief is submitted in support of the Appeal in the above-identified application.

**CERTIFICATE OF MAILING**  
**37 CFR 1.8(a)**

I hereby certify that this correspondence is being deposited with the United States Postal Service as First-Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on the date below:

July 28, 2006

\_\_\_\_\_  
Date

*Robert V. Wilder*

\_\_\_\_\_  
Signature

**APPEAL BRIEF**  
**PAGE 1 OF 28**

*Serial Number 09/970,655*  
**Attorney Docket No. AUS920010938US1**

08/01/2006 HDESTA1 00000005 090447 09970655

01 FC:1402 500.00 DA

TABLE OF CONTENTS

REAL PARTY IN INTEREST .....	4
RELATED APPEALS AND INTERFERENCES .....	4
STATUS OF CLAIMS .....	4
STATUS OF AMENDMENTS .....	4
SUMMARY OF THE CLAIMED SUBJECT MATTER .....	4
GROUND OF REJECTION TO BE REVIEWED ON APPEAL .....	11
ARGUMENT .....	12
I. With regard to the rejection of claims 1-3, 5-13 and 16-24 under 35 USC 103(a) as being unpatentable over Misra in view of Kobus, it is respectfully submitted that there is no suggestion in either reference for the proposed combination and even the proposed combination cannot render the present invention obvious since even the hypothetical combination of references fails to suggest several of the recited features of the noted claims. ....	
	12
II. With regard to the rejection of claims 4 and 15 under 35 USC 103(a) as being unpatentable over Misra in view of Kobus and in still further view of Doherty, it is respectfully submitted that there is no suggestion in any of the references for the proposed combination and even the proposed combination cannot render the present invention obvious since even the hypothetical combination of references fails to suggest several of the recited features of the noted claims. ....	
	18
III. With regard to the rejection of claim 14 under 35 USC 103(a) as being unpatentable over Misra in view of Kobus and in still further view of Nabahi, it is respectfully submitted that there is no suggestion in any of the references for the proposed combination and even the proposed combination cannot render the present invention obvious since even the hypothetical combination of references fails to suggest several of the recited features of the noted claim. ....	
	19

APPEAL BRIEF  
PAGE 2 OF 28

*Serial Number 09/970,655*  
**Attorney Docket No. AUS920010938US1**

86		
87	CONCLUSION .....	20
88		
89	CLAIMS APPENDIX .....	22-26
90		
91	EVIDENCE APPENDIX .....	27
92		
93	RELATED PROCEEDINGS APPENDIX .....	28
94		

APPEAL BRIEF  
PAGE 3 OF 28

*Serial Number 09/970,655*  
**Attorney Docket No. AUS920010938US1**

95 REAL PARTY IN INTEREST

96  
97 The present application is assigned to International Business  
98 Machines Corporation, the real party in interest.  
99

100  
101 RELATED APPEALS AND INTERFERENCES

102  
103 There are no related Appeals or Interferences currently pending.  
104  
105

106 STATUS OF THE CLAIMS

107  
108 Claims 1-24 are pending and stand finally rejected by the  
109 Examiner as noted in the Final Office Action mailed April 6,  
110 2006. The rejection of claims 1-24 is hereby being appealed.  
111  
112

113 STATUS OF AMENDMENTS

114  
115 No Amendments have been filed subsequent to the Final Rejection  
116 which was mailed on 4/6/06.  
117  
118

119 SUMMARY OF THE CLAIMED SUBJECT MATTER

120  
121 The subject patent application includes independent claims 1, 16  
122 and 24, and the remaining claims ultimately depend from and

APPEAL BRIEF  
PAGE 4 OF 28

*Serial Number 09/970,655*  
Attorney Docket No. AUS920010938US1

123 include all of the limitations of one of the independent claims.  
124 Claim 1 recites a method embodying the present invention, claim  
125 16 recites a medium embodying the present invention and claim 24  
126 recites a network embodying the present invention. A concise  
127 explanation of the claimed subject matter is defined in each of  
128 the independent claims 1, 16 and 24, which, along with exemplary  
129 specification and drawing references, is set forth below.

130  
131 1. A method for extracting identification information from a  
132 software package (*e.g., inter alia, Figure 5 and Page 11, line*  
133 *22, to page 12, line 23*), said software package including a  
134 number of executable software modules (*Figure 6, Program Modules*  
135 *601, page 12 line 25 to page 13, line 26 and 814 Figure 8*)  
136 organized in a manner (*e.g., inter alia, Linked Program Modules*  
137 *603, Figure 6*) determined by said identification information  
138 (*e.g., inter alia, Figure 5*), said method comprising:

139  
140 determining an organization of said executable software modules  
141 within said software package (*e.g., inter alia, 811, 813 and 814*  
142 *Figure 8*); and

143  
144 extracting (*e.g., inter alia, 815 Figure 8*) said identification  
145 information (*e.g., inter alia, Figure 5 and 605 Figure 6*) from  
146 said organization of said executable software modules (*e.g.,*  
147 *inter alia, 603 Figure 6*) within said software package.

148  
149 To the combination set forth in claim 1, claim 2 adds the  
150 recitation that the "executable modules are coupled together

APPEAL BRIEF  
PAGE 5 OF 28

151 (e.g., *inter alia*, 603 Figure 6) in a manner representative of  
152 said identification information (e.g., *inter alia*, Figure 5 and  
153 605 Figure 6).

154  
155 To the combination set forth in claim 2, claim 3 adds the  
156 recitation that said executable software modules are coupled  
157 together by compiling (e.g., *inter alia*, p9, 127 et seq., p10,  
158 127 & 32 et seq., & p11, 17 et seq.) said software modules into  
159 an executable form of said software package.

160  
161 To the combination set forth in claim 2, claim 4 adds the  
162 recitation that said executable software modules are coupled  
163 together by linking (e.g., *inter alia*, Abstract, line 15; p9,  
164 line 27, 31; p10, line 32; p11, 7; p12, lines 7, 19 and 22 et  
165 seq.) said executable software modules into an executable form of  
166 said software package.

167  
168 To the combination set forth in claim 1, claim 5 adds the  
169 recitations of analyzing said software package to determine an  
170 organizational relationship among said executable software  
171 modules; and determining a binary series (e.g., *inter alia*,  
172 Abstract lines 11-13; p3, line 16 et seq.; p11, line 16 et seq.;  
173 p11, line 31 et seq.) from said organizational relationship of  
174 said executable software modules.

175  
176 To the combination set forth in claim 1, claim 6 adds the  
177 recitation of transmitting said software package over a network  
178 (e.g., *inter alia*, Abstract line 16 et seq.) to a requesting

**APPEAL BRIEF**  
**PAGE 6 OF 28**

***Serial Number 09/970,655***  
**Attorney Docket No. AUS920010938US1**

179 terminal, said requesting terminal being enabled to extract said  
180 identification information from said organization of said  
181 executable software modules of said software package.

182  
183 To the combination set forth in claim 6, claim 7 adds the  
184 recitation that said software package is transmitted from a user  
185 terminal over an Internet network (*e.g., inter alia, p2, lines*  
186 *15, 29; Figure 4, 405*) to a server (*e.g. inter alia, Figure 4,*  
187 *407*).

188  
189 To the combination set forth in claim 6, claim 8 adds the  
190 recitation that said user terminal is a wireless device (*e.g.,*  
191 *inter alia, p5, line 22 et seq.*).

192  
193 To the combination set forth in claim 6, claim 9 adds the  
194 recitation that said user terminal is a personal computer system  
195 (*e.g., inter alia, p5, line 22 et seq.*).

196  
197 To the combination set forth in claim 1, claim 10 adds the  
198 recitation that said identification information includes an  
199 identification of a user (*e.g., inter alia, p13, line 21 et seq.*)  
200 of said software package.

201  
202 To the combination set forth in claim 1, claim 11 adds the  
203 recitation that said identification information includes an  
204 identifying number (*e.g., inter alia, p13, line 21 et seq.*)  
205 related to said software package.

206

**APPEAL BRIEF**  
**PAGE 7 OF 28**

***Serial Number 09/970,655***  
**Attorney Docket No. AUS920010938US1**



207 To the combination set forth in claim 11, claim 12 adds the  
208 recitation that said identification information further includes  
209 an identification of a user (e.g., *inter alia*, p13, line 20 et  
210 seq.) of said software package.

211  
212 To the combination set forth in claim 1, claim 13 adds the  
213 recitation that said executable software modules are organized in  
214 a series of sets (e.g., *inter alia*, p13, line 27 et seq.) of  
215 executable software modules, each of said sets comprising a  
216 predetermined number of executable software modules.

217  
218 To the combination set forth in claim 13, claim 14 adds the  
219 recitation that said series of sets corresponds to a binary  
220 series, (e.g., *inter alia*, Abstract lines 11-13; p3, line 16 et  
221 seq.; p11, line 16 et seq.; p11, line 31 et seq.) and each of  
222 said sets comprises first and second executable software modules,  
223 said binary series being determined in accordance with a sequence  
224 of said first and second executable software modules within said  
225 sets of said executable software modules.

226  
227 To the combination set forth in claim 13, claim 15 adds the  
228 recitation that said series of sets is organized in other than a  
229 binary format (e.g., *inter alia*, p9, line 1 et seq.; p11, line 24  
230 et seq.), each of said sets comprising a number of said  
231 executable software modules other than two, said identification  
232 information being determined according to an order in which said  
233 number of executable software modules are sequenced within said  
234 sets of executable software modules.

**APPEAL BRIEF**  
**PAGE 8 OF 28**

***Serial Number 09/970,655***  
**Attorney Docket No. AUS920010938US1**

235  
236 The drawing and specification references of independent claim 16  
237 correspond to the similar elements as identified above for  
238 independent claim 1.

239  
240 16. A medium including machine readable coded indicia, said  
241 machine readable coded indicia being selectively operable in  
242 combination with a processing circuit for extracting embedded  
243 identification information from a software package (e.g., *inter*  
244 *alia*, Figure 5 and Page 11, line 22, to page 12, line 23), by  
245 determining an organization of executable software modules  
246 (Figure 6, Program Modules 601, page 12 line 25 to page 13, line  
247 26 and 814 Figure 8) within said software package, wherein  
248 relationships between said executable software modules (e.g.,  
249 *inter alia*, Linked Program Modules 603, Figure 6) are  
250 representative of said identification information (e.g., *inter*  
251 *alia*, Figure 5), embedded within said software package.

252  
253 To the combination set forth in claim 16, claim 17 adds the  
254 recitation that said medium is an optically encoded disk (e.g.,  
255 *inter alia*, 222 Figure 2).

256  
257 To the combination set forth in claim 16, claim 18 adds the  
258 recitation that said medium is a magnetically encoded magnetic  
259 diskette (e.g., *inter alia*, 219 Figure 2).

260  
261 To the combination set forth in claim 16, claim 19 adds the  
262 recitation that said software package resides on a storage device

APPEAL BRIEF  
PAGE 9 OF 28

*Serial Number 09/970,655*  
**Attorney Docket No. AUS920010938US1**

263 (e.g., *inter alia*, 218 Figure 2) within a computer device.  
264  
265 To the combination set forth in claim 16, claim 20 adds the  
266 recitation that the software package resides on a memory device  
267 (e.g., *inter alia*, 207 Figure 2) within a computer device.  
268  
269 To the combination set forth in claim 16, claim 21 adds the  
270 recitation that said embedded identification information includes  
271 an identification of a user (e.g., *inter alia*, p13, line 20 et  
272 seq.) of said software package.  
273  
274 To the combination set forth in claim 16, claim 22 adds the  
275 recitation that said embedded identification information includes  
276 an identifying number (e.g., *inter alia*, p13, line 21 et seq.)  
277 related to said software package.  
278  
279 To the combination set forth in claim 22, claim 23 adds the  
280 recitation that said embedded identification information further  
281 includes an identification of a user (e.g., *inter alia*, p13, line  
282 20 et seq.) of said software package.  
283  
284 The drawing and specification references of independent claim 24  
285 correspond to the similar elements as identified above for  
286 independent claims 1 and 16.  
287  
288 24. A network arranged to enable extracting of organizational  
289 information of an organization of executable software modules  
290 (Figure 6, Program Modules 601, page 12 line 25 to page 13, line

APPEAL BRIEF  
PAGE 10 OF 28

*Serial Number 09/970,655*  
**Attorney Docket No. AUS920010938US1**

291 26 and 814 Figure 8) within a software package (e.g., *inter alia*,  
292 Figure 5 and Page 11, line 22, to page 12, line 23), at a user  
293 terminal and transferring said organizational information to a  
294 server for use in deriving identification information embedded  
295 within said organizational information, said network comprising:  
296  
297 a user terminal (e.g., *inter alia*, 401, Figure 4) at which said  
298 software package resides;  
299  
300 a server (e.g., *inter alia*, 407, Figure 4); and  
301  
302 an interconnection (e.g., *inter alia*, 403 and 405, Figure 4)  
303 between said server and said user terminal, said user terminal  
304 being responsive to a request to upload said organizational  
305 information of said software package for determining said  
306 organizational information and transferring said organizational  
307 information to said server (e.g., *inter alia*, 811 and 813 Figure  
308 8).

309  
310 **GROUND OF REJECTION TO BE REVIEWED ON APPEAL**  
311

312 I. Claims 1-3, 5-13 and 16-24 were rejected under 35 USC 103(a)  
313 as being unpatentable over Misra (U.S. Patent 6,189,146 B1) in  
314 view of Kobus (U.S. Patent 4,864,494);  
315

316 II. Claims 4 and 15 were rejected under 35 USC 103(a) as being  
317 unpatentable over Misra in view of Kobus, and still in further  
318 view of Doherty et al (U.S. Patent 6,920,567 B1); and

APPEAL BRIEF  
PAGE 11 OF 28

*Serial Number 09/970,655*  
**Attorney Docket No. AUS920010938US1**

319  
320     **III.** Claim 14 was rejected under 35 USC 103(a) as being  
321 unpatentable over Misra in view of Kobus, and still in further  
322 view of Nabahi (U.S. Patent 6,006,035).  
323  
324

325                     **ARGUMENT**  
326

327             **I.** With regard to the rejection of claims 1-3, 5-13 and 16-  
328 24 under 35 USC 103(a) as being unpatentable over Misra in view  
329 of Kobus, it is noted that the present invention provides a means  
330 by which software identification information, such as a user name  
331 or software package serial number, is extracted from a software  
332 package by determining the manner in which executable software  
333 modules are organized in the software package. With the present  
334 invention, user identification or the serial number  
335 identification, for example, of a particular software package,  
336 may be ascertained by the manner in which the software package  
337 executable modules are arranged. In one example, the  
338 identification information is represented in binary format, i.e.  
339 a series of "1's" and "0s", and that identification information  
340 is applied to the sequencing of executable software modules in a  
341 software package such that one sequence of executable software  
342 modules represents a binary "one" while another sequence of  
343 executable software modules represents a binary "zero". Thus by  
344 determining the relative sequencing of the executable software  
345 modules (rather than, for example, accessing a data file), one is  
346 enabled to re-assemble the binary identification information

APPEAL BRIEF  
PAGE 12 OF 28

*Serial Number 09/970,655*  
**Attorney Docket No. AUS920010938US1**

347 which is embedded into the software package and determine, for  
348 example, the licensed owner of the software package and/or the  
349 serial number of the software package. Formats other than a  
350 binary format may also be implemented.

351  
352 As stated in applicant's specification, "instead of including  
353 user information in a separate code segment of the download, the  
354 transaction information is included in the structure or  
355 organization of the downloaded code or data. Every software  
356 package consists of code blocks, data areas, subroutines, methods  
357 and other such subcomponents. After a requesting user has  
358 furnished the requested information and agreed to the terms of a  
359 license agreement, the website will compile and link the various  
360 components of the software package together to form an executable  
361 module which is then downloaded to the user. Normally, when the  
362 various components of the software package are linked together to  
363 form the executable module, the exact order of placement or  
364 sequence of the components is usually not critical for the proper  
365 execution of the software. In accordance with the present  
366 invention however, the ordering and/or sequence of those  
367 components and/or sub-components is used to encode selected  
368 transaction information such that this encoded information can  
369 later be extracted from the licensed software and copies of the  
370 licensed software in the downloaded executable form. Thus, the  
371 ordering or sequence of the software package components is used  
372 to encode a serial number for the licensed software package as  
373 well as other useful information. The embedded information can be  
374 checked at a later time to determine if the software or data have

**APPEAL BRIEF**  
**PAGE 13 OF 28**

***Serial Number 09/970,655***  
**Attorney Docket No. AUS920010938US1**

375 been tampered with or if the usage pattern leads to suspicions  
376 about illegal copying. The embedded information can then be used  
377 to track down the source of the illegal copies".

378  
379 With specific regard to the rejection of to the rejection of  
380 claims 1-3, 5-13 and 16-24 under 35 USC 103(a) as being  
381 unpatentable over Misra in view of Kobus,, it is noted that Misra  
382 discloses a software licensing system which includes a license  
383 generator located at a licensing clearinghouse and at least one  
384 license server and multiple clients located at a company or  
385 entity. To prevent a license pack from being copied and installed  
386 on multiple license servers, the license generator assigns a  
387 unique license pack ID with the particular license server in a  
388 master license database kept at the licensing clearinghouse. To  
389 prevent an issued license from being copied from one client  
390 machine to another, the software license is assigned to a  
391 specific client by including a client ID within the license, i.e.  
392 the identity of the client **is typed** into the license agreement.  
393 The software license also has a license ID that is associated  
394 with the client ID in a database record kept at the license  
395 server. There is no mention or suggestion anywhere in Misra of  
396 **extracting ID information by determining an organization of the**  
397 **executable software modules within a software package.**

398  
399 To support the allegation that Misra anticipated the present  
400 invention, specifically to support the alleged anticipation of  
401 the claim language "**determining an organization of said software**  
402 **modules** within said software package"(emphasis added), the

403 Examiner had cited column 6, lines 25-35 of Misra in which the  
404 following language appears: "The certifying authority performs a  
405 verification analysis of the **organization** to verify that it is a  
406 real entity and that the identification information is true and  
407 accurate" (emphasis added). In the cited Misra reference, just  
408 above the quoted reference, in column 6 line 31, it is stated  
409 that "The entity or **organization** that owns, or is responsible  
410 for, the license server 28 registers itself with an independent  
411 certifying authority that is trusted by both the **organization** and  
412 the clearinghouse" (emphasis added).

413  
414 It is submitted that an "**organization**", meaning a company,  
415 corporation or other entity, does not and cannot suggest in any  
416 possible way the use of the "**organization**" (or arrangement) of  
417 executable software modules in a software package.

418  
419 Although a word search for the word "organization" apparently  
420 returned the Misra reference, the resulting Misra reference was  
421 applied without due consideration of the different contexts and  
422 meanings for the word "organization". The cited Misra reference  
423 and the present application use two different meanings for the  
424 word "organization" and one has nothing to do with the other,  
425 much less does Misra's use of the word "organization" (e.g. a  
426 corporate entity) provide any basis which could possibly be used  
427 to render obvious the use of the "**organization**" (e.g. an  
428 **arrangement or sequence**) of executable software modules to  
429 extract information, such as user ID or program serial number,  
430 from a software program.

APPEAL BRIEF  
PAGE 15 OF 28

*Serial Number 09/970,655*  
Attorney Docket No. AUS920010938US1



431  
432 In another language reference to Misra which is relied upon in  
433 citing Misra as using the term "organization", column 12, lines  
434 13-15 of Misra states that "The licenses are **organized** in the  
435 license cache 136 according to information about the license  
436 issuing authority and product ID (emphasis added)". This language  
437 in Misra clearly refers to listing licenses in a cache by issuing  
438 authority i.e. all from one authority get listed together before  
439 those from another authority. Listing licenses in a database or  
440 cache by entities, either alphabetically or otherwise, has  
441 nothing to do with organizing or **arranging executable software**  
442 **modules** in a software package to embed information about the  
443 software package whereby such information can be extracted by  
444 analysis of the order or sequence of the executable modules  
445 within the software package as is claimed by the applicant.  
446

447 Misra does not extract software package identification  
448 information from the manner in which **executable** software modules  
449 in the software package are arranged or organized. With the  
450 present invention, **the arrangement of executable software modules**  
451 **within the software package contains the information needed to**  
452 **re-assemble the user identification information** of the software  
453 package. Misra, instead, maintains the software ID information in  
454 a database (Abstract, 2:40, 2:50, 3:19, etc.) and **not in an**  
455 **arrangement of the executable software modules** in a software  
456 package. Thus, it is submitted that the Misra reference fails as  
457 a reference for disclosing or even suggesting the extraction of  
458 information from the mere **organization** or arrangement of  
459 executable software modules in a software program.

APPEAL BRIEF  
PAGE 16 OF 28

*Serial Number 09/970,655*  
Attorney Docket No. AUS920010938US1

460  
461 The Kobus reference is similar to Misra in that there is no  
462 teaching or even suggestion for determining an organization of  
463 executable software modules within a software package and  
464 extracting identification information from the organization of  
465 executable software modules within the software package, as is  
466 clearly recited in all of the pending independent claims 1, 16  
467 and 24. Kobus, which was cited for the first time in the Final  
468 Office Action mailed 4/6/2006, discloses a system that includes  
469 an encrypted security message uniquely encoded at predetermined  
470 locations within a software or program function. The software  
471 includes pre-set errors to cause failure of execution of the  
472 function unless the errors are nulled during the operation of the  
473 program. Kobus nowhere even suggests **determining an organization**  
474 **of executable software modules within a software package and**  
475 **extracting identification information from the organization of**  
476 **the executable software modules within said software package as**  
477 is clearly stated in the independent claims 1, 16 and 24.

478  
479 Further, it is submitted that there is no suggestion in either  
480 reference for the hypothetical combination of Misra and Kobus  
481 since each reference accomplishes a different function in a  
482 different manner. i.e. Misra teaches the maintenance of a client  
483 identification in a database while Kobus teaches a method of  
484 preventing an operation of a software program without first  
485 removing errors which are pre-set into the program. Neither  
486 reference either teaches or even suggests extracting information  
487 from the arrangement or organization of executable modules within

APPEAL BRIEF  
PAGE 17 OF 28

*Serial Number 09/970,655*  
**Attorney Docket No. AUS920010938US1**

488 a software package as is clearly recited in all of the  
489 independent claims and also, through dependence, in the dependent  
490 claims as well.

491  
492 Thus, it is submitted that there is no basis in either reference  
493 for the hypothetical combination of Misra and Kobus and further,  
494 that since neither Misra nor Kobus either discloses or suggests  
495 determining an organization of executable software modules within  
496 a software package and extracting identification information from  
497 the organization of the executable software modules within said  
498 software package, it is submitted that even the hypothetical  
499 combination of Misra and Kobus fails to render the present  
500 invention as stated in the pending independent claims 1, 16 and  
501 24 and related dependent claims 2-3, 5-13 and 17-23 obvious under  
502 35 USC 103(a).

503  
504 **II.** With regard to the rejection of claims 4 and 15 under 35 USC  
505 103(a) as being unpatentable over Misra in view of Kobus and in  
506 still further view of Doherty, it is noted that claims 4 and 15  
507 are dependent from, and include all of the limitations of claim 1  
508 as well as the further limitations of the intermediate dependent  
509 claims. Doherty also maintains ID information in a database and  
510 **not embedded in the software package by the manner in which the**  
511 **executable modules of the software package are organized as**  
512 claimed by the applicant. Doherty discloses a digital content  
513 file (DCF) including a license control mechanism controlling the  
514 licensed use of digital content and a system and method for  
515 distributing licensable digital content files and licenses. The

516 file access control mechanism includes a license monitor and  
517 control mechanism communicating with a dynamic license database  
518 and controlling use of the digital content and a license control  
519 utility providing communications between a user system and an  
520 external system to communicate license definition information and  
521 includes a graphical user interface. The license information of  
522 Doherty may be stored initially in the dynamic license database  
523 or provided from an external system. **With the present invention,**  
524 **the license information is embedded in the arrangement of the**  
525 **executable software modules** of the software package not in a  
526 dynamic license database or provided from an external system as  
527 specified in Doherty. Thus, since neither Misra, nor Kobus nor  
528 Doherty, or even a hypothetical combination of all three  
529 references, shows or even suggests extracting information by  
530 determining an organization of the executable software modules  
531 within a software package as is disclosed and claimed by the  
532 applicant, it is submitted that claims 4 and 15 are allowable  
533 under 35 USC 103(a) over even the hypothetical combination of  
534 Misra, Kobus and Doherty.

535

536 **III.** With regard to the rejection of claim 14 under 35 USC 103(a)  
537 as being unpatentable over Misra in view of Kobus and in still  
538 further view of Nabahi, it is noted that Nabahi was cited against  
539 dependent claims merely to allegedly show the use of a binary  
540 format. Applicant notes that Nabahi discloses neither the use of  
541 a binary format as used by the applicant, nor the use of  
542 extracted binary formatted organizational information to  
543 determine identification information associated with a software

**APPEAL BRIEF**  
**PAGE 19 OF 28**

*Serial Number 09/970,655*  
**Attorney Docket No. AUS920010938US1**

package. Thus, since neither Misra, nor Kobus nor Nabahi, or even a hypothetical combination of all three references, shows or even suggests extracting information by determining an organization of the executable software modules within a software package as is disclosed and claimed by the applicant, it is submitted that claim 14 is allowable under 35 USC 103(a) over even the hypothetical combination of Misra, Kobus and Nabahi.

### CONCLUSION

For the reasons stated above, applicant urges the Board to conclude that the rejections of claims 1-3, 5-13 and 16-24 under 35 USC 103(a) as being unpatentable over Misra in view of Kobus, and the rejections of claims 4 and 15 under 35 USC 103(a) as being unpatentable over Misra in view of Kobus, and still in further view of Doherty et al, and the rejection of claim 14 under 35 USC 103(a) as being unpatentable over Misra in view of Kobus, and still in further view of Nabahi, are not well-founded and should be reversed.

Please charge IBM Corporation Deposit Account No. 09-0447 in the amount of \$500.00 for submission of a Brief in Support of Appeal. No additional fee or extension of time is believed to be required; however, in the event an additional fee or extension of time is required, please charge the fee, as well as any other fee necessary to further the prosecution of this application, to the above-identified deposit account.

APPEAL BRIEF  
PAGE 20 OF 28

*Serial Number 09/970,655*  
**Attorney Docket No. AUS920010938US1**

572

573 Respectfully submitted,

574

575 *Robert V. Wilder*

576

577 Robert V. Wilder (Tel:512-246-8555)

578 Registration No. 26,352

579 Attorney for Applicant

580 4235 Kingsburg Drive

581 Round Rock, Texas 78681

APPEAL BRIEF

PAGE 21 OF 28

*Serial Number 09/970,655*

**Attorney Docket No. AUS920010938US1**

**CLAIMS APPENDIX**

582  
583  
584 1. A method for extracting identification information from a  
585 software package, said software package including a number of  
586 executable software modules organized in a manner determined by  
587 said identification information, said method comprising:  
588  
589 determining an organization of said executable software modules  
590 within said software package; and  
591  
592 extracting said identification information from said organization  
593 of said executable software modules within said software package.  
594  
595 2. The method as set forth in claim 1 wherein said executable  
596 software modules are coupled together in a manner representative  
597 of said identification information.  
598  
599 3. The method as set forth in claim 2 wherein said executable  
600 software modules are coupled together by compiling said software  
601 modules into an executable form of said software package.  
602  
603 4. The method as set forth in claim 2 wherein said executable  
604 software modules are coupled together by linking said executable  
605 software modules into an executable form of said software  
606 package.  
607  
608 5. The method as set forth in claim 1 and further including:  
609  
610 analyzing said software package to determine an organizational

**APPEAL BRIEF  
PAGE 22 OF 28**

***Serial Number 09/970,655*  
Attorney Docket No. AUS920010938US1**

611 relationship among said executable software modules; and  
612  
613 determining a binary series from said organizational relationship  
614 of said executable software modules.  
615  
616 6. The method as set forth in claim 1 and further including  
617 transmitting said software package over a network to a requesting  
618 terminal, said requesting terminal being enabled to extract said  
619 identification information from said organization of said  
620 executable software modules of said software package.  
621  
622 7. The method as set forth in claim 6 wherein said software  
623 package is transmitted from a user terminal over an Internet  
624 network to a server.  
625  
626 8. The method as set forth in claim 6 wherein said user terminal  
627 is a wireless device.  
628  
629 9. The method as set forth in claim 6 wherein said user terminal  
630 is a personal computer system.  
631  
632 10. The method as set forth in claim 1 wherein said  
633 identification information includes an identification of a user  
634 of said software package.  
635  
636 11. The method as set forth in claim 1 wherein said  
637 identification information includes an identifying number related  
638 to said software package.

**APPEAL BRIEF**  
**PAGE 23 OF 28**

***Serial Number 09/970,655***  
**Attorney Docket No. AUS920010938US1**



639  
640 12. The method as set forth in claim 11 wherein said  
641 identification information further includes an identification of  
642 a user of said software package.  
643  
644 13. The method as set forth in claim 1 wherein said executable  
645 software modules are organized in a series of sets of executable  
646 software modules, each of said sets comprising a predetermined  
647 number of executable software modules.  
648  
649 14. The method as set forth in claim 13 wherein said series of  
650 sets corresponds to a binary series, and each of said sets  
651 comprises first and second executable software modules, said  
652 binary series being determined in accordance with a sequence of  
653 said first and second executable software modules within said  
654 sets of said executable software modules.  
655  
656 15. The method as set forth in claim 13 wherein said series of  
657 sets is organized in other than a binary format, each of said  
658 sets comprising a number of said executable software modules  
659 other than two, said identification information being determined  
660 according to an order in which said number of executable software  
661 modules are sequenced within said sets of executable software  
662 modules.  
663  
664 16. A medium including machine readable coded indicia, said  
665 machine readable coded indicia being selectively operable in  
666 combination with a processing circuit for extracting embedded

**APPEAL BRIEF**  
**PAGE 24 OF 28**

***Serial Number 09/970,655***  
**Attorney Docket No. AUS920010938US1**

667 identification information from a software package by determining  
668 an organization of executable software modules within said  
669 software package, wherein relationships between said executable  
670 software modules are representative of said identification  
671 information embedded within said software package.

672  
673 17. The medium as set forth in claim 16 wherein said medium is an  
674 optically encoded disk.

675  
676 18. The medium as set forth in claim 16 wherein said medium is a  
677 magnetically encoded magnetic diskette.

678  
679 19. The medium as set forth in claim 16 wherein said software  
680 package resides on a storage device within a computer device.

681  
682 20. The medium as set forth in claim 16 wherein software package  
683 resides on a memory device within a computer device.

684  
685 21. The medium as set forth in claim 16 wherein said embedded  
686 identification information includes an identification of a user  
687 of said software package.

688  
689 22. The medium as set forth in claim 16 wherein said embedded  
690 identification information includes an identifying number related  
691 to said software package.

692  
693 23. The medium as set forth in claim 22 wherein said embedded  
694 identification information further includes an identification of

**APPEAL BRIEF**  
**PAGE 25 OF 28**

***Serial Number 09/970,655***  
**Attorney Docket No. AUS920010938US1**

695 a user of said software package.

696

697 24. A network arranged to enable extracting of organizational  
698 information of an organization of executable software modules  
699 within a software package at a user terminal and transferring  
700 said organizational information to a server for use in deriving  
701 identification information embedded within said organizational  
702 information, said network comprising:

703

704 a user terminal at which said software package resides;

705

706 a server; and

707

708 an interconnection between said server and said user terminal,  
709 said user terminal being responsive to a request to upload said  
710 organizational information of said software package for  
711 determining said organizational information and transferring said  
712 organizational information to said server.

**APPEAL BRIEF**

**PAGE 26 OF 28**

***Serial Number 09/970,655***

**Attorney Docket No. AUS920010938US1**

713

**EVIDENCE APPENDIX**

714

715 There are no items in this Appendix.

**APPEAL BRIEF**

**PAGE 27 OF 28**

***Serial Number 09/970,655***

**Attorney Docket No. AUS920010938US1**

716

**RELATED PROCEEDINGS APPENDIX**

717

718 There are no items in this Appendix.

**APPEAL BRIEF**

**PAGE 28 OF 28**

***Serial Number 09/970,655***

**Attorney Docket No. AUS920010938US1**